

SERVICE DATE – AUGUST 27, 2015

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 551 (Sub-No. 2X)

KNOX AND KANE RAILROAD COMPANY—ABANDONMENT EXEMPTION—  
MCKEAN COUNTY, PA.

Decided: August 26, 2015

On February 26, 2015, Knox and Kane Railroad Company (Knox & Kane) filed a verified notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments and Discontinuances of Service to abandon a stub-ended line of railroad between Mt. Jewett, Pa. (milepost 165.2) and the Kinzua Bridge (milepost 169.1), a distance of 3.9 miles in McKean County, Pa. (the Line).

In a decision served on April 4, 2015, the Board expressed concern over certain issues raised by Knox & Kane's verified notice of exemption. The Board therefore directed Knox & Kane to submit supplemental information and postponed the effectiveness of the exemption until further order of the Board. Knox & Kane requested an extension of time to file its supplemental information, which the Board granted by decision served May 5, 2015, and Knox & Kane filed its supplemental information on June 1, 2015.

On July 24, 2015, the Board served a decision permitting Knox & Kane's notice of exemption to be published. Notice of the exemption was served on July 24, 2015 and published in the Federal Register on July 30, 2015 (80 Fed. Reg. 45,586). The exemption is scheduled to become effective on August 31, 2015.

The Board's Office of Environmental Analysis (OEA) served an environmental assessment in this proceeding on March 23, 2015, recommending that a condition be imposed on any decision granting abandonment authority.<sup>1</sup> In the EA, OEA stated that the National Geodetic Survey (NGS) submitted comments indicating that three geodetic station markers may be located within the right-of-way of the proposed abandonment. OEA accordingly recommended that a condition be imposed requiring Knox & Kane to consult with and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers.

OEA issued its final EA on April 9, 2015, noting that no comments on the EA were received by the April 7, 2015 due date and recommending that the previously recommended

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<sup>1</sup> In the EA, OEA stated that it assumed that Knox & Kane would salvage the rail line but would leave the Kinzua Bridge intact, if granted abandonment authority.

environmental condition be imposed. Accordingly, the condition recommended by OEA in the EA will be imposed.

In the EA, OEA also stated that the right-of-way may be suitable for other public use following abandonment and salvage of the Line. As part of its February 24, 2015 notice of exemption, Knox & Kane filed a request for the issuance of a notice of interim trail use (NITU) to negotiate with Headwaters Charitable Trust (HCT) for acquisition of the Line for use as a trail under the National Trails System Act, 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29. On August 17, 2015, HCT submitted a statement of its willingness to assume financial responsibility for the right-of-way and has acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation of the right-of-way for rail service, as required by 49 C.F.R. § 1152.29. On August 20, 2015, Knox & Kane agreed to negotiate with HCT for interim rail use.

Because HCT's request complies with the requirements of 49 C.F.R. § 1152.29 and Knox & Kane is willing to enter into interim trail use negotiations, a NITU will be issued. The parties may negotiate during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29(d)(2) and (h). If no agreement is reached within 180 days, Knox & Kane may fully abandon the Line, subject to any outstanding conditions in this proceeding. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to possible future reconstruction and reactivation of the right-of-way for rail service.

As conditioned, this action will not significantly affect either the quality of the environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served on July 24, 2015, and published in the Federal Register on July 30, 2015, exempting the abandonment of the Line described above, is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit HCT to negotiate with Knox & Kane for trail use for the rail line, for a period of 180 days from the service date of this decision and notice, until February 23, 2016. The abandonment is also subject to the condition that Knox & Kane consult with and notify NGS at least 90 days prior to beginning salvage activities that will disturb or destroy any geodetic station markers.
3. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the

sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

4. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in the ordering paragraph above.

5. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).

6. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

7. If an agreement for interim trail use/rail banking is reached by February 23, 2016 for the right-of-way, interim trail use may be implemented. If no agreement is reached, Knox & Kane may fully abandon the Line, subject to any outstanding conditions in this proceeding.

8. This decision and notice is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.